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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,488	11/27/2004	Maximo Gavira Montes		6817

48787 7590 04/07/2006

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EXAMINER

WALCZAK, DAVID J

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/517,488	GAVIRA MONTES, MAXIMO	
	Examiner	Art Unit	
	David J. Walczak	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 28 February 2006.

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-5 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-4 is/are rejected.

7) ☒ Claim(s) 5 is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

 a) ☒ All b) ☐ Some * c) ☐ None of:

 1. ☒ Certified copies of the priority documents have been received.

 2. ☐ Certified copies of the priority documents have been received in Application No. _____.

 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____
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DETAILED ACTION

Claim Rejections - 35 USC § 112

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to whether or not the brush defined on line 2 therein is intended to define the same brush recited in claim 1 or a different brush. Clarification is needed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 remain rejected under 35 U.S.C. 103(a) as being unpatentable over O'Rourke in view of Severin et al. (hereinafter Severin). In regard to claims 1 and 2, Figure 10 of O'Rourke discloses a brush that can be filled with product and comprised of an elastic body 11 having an outlet opening at an end thereof with internal threads 115 and a membrane 112 on the internal portion of the opening and a rigid, elongated, "stepped" arm 12, 52 with an outside thread for mating with internal thread 115, a distal head portion 14 having a greater diameter than the narrow portion of the neck and having a plurality of bristles groups 16 thereon and a axial opening 18, 60 extending the

length thereof wherein the arm perforates the membrane 112 when the arm is threaded to the body. Although the O'Rourke reference does not disclose the use of a cap for covering the outlet opening before the body is attached to the arm, attention is directed to the Severin reference, which discloses another applicator wherein the body 14 has an outlet opening 20 with a frangible seal 22 which is threadedly attached to an arm 26 (see Figure 1). Prior to assembly, however, a cap is used to close the outlet opening to thereby protect the seal (see column 18, lines 61-64). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such a cap over the outlet opening in the O'Rourke device in order to enable the seal to be protected prior to assembly. Although this embodiment of the O'Rourke reference does not include a fill opening closed by a threaded cap at the end of the body, attention is directed to the embodiment shown in Figure 1 of O'Rourke, which discloses such a fill opening 64 closed by a threaded cap 66 in order to enable the body to be refilled. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such a fill opening and cap onto the embodiment shown in Figure 10 in order to enable the device to be refilled. It is lastly noted that the statements of intended use, i.e., for use in the cleaning of a toilet with disinfecting products, do not lend any patentable structure to the claims. Further, the O'Rourke device is capable of being used as claimed. In regard to claim 3, the axial opening varies in diameter to form a bottle neck 60 which would inherently provide a siphon effect and prevent dripping.

Allowable Subject Matter

Claim 4 would be allowable if rewritten to overcome the rejection under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 2/28/06 have been fully considered but they are not persuasive. The Applicant seems to contend that the O'Rourke reference is not applicable against claim 1 in that body portion thereof is not an elastic body and that the O'Rourke device includes many more elements than the Applicant's device. Firstly, however, element 28 in the O'Rourke device is defined as a flexible tube that will regain its shape after being squeezed (see column 2, lines 57-65) and such a structure enables the body to be defined as an "elastic body", regardless of the fact that other, rigid elements exist within the body. Secondly, even though the O'Rourke device includes additional structure that is not required by the Applicant's invention, the O'Rourke device (combined with the teachings of Severin, as discussed supra) discloses the invention as claimed. The fact that it discloses additional structure that is not claimed or not present in the Applicant's device is irrelevant.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
4/3/06